

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 49**

Introduced By: Hudkins, 21;  
Read first time: January 4, 2007  
Committee: Health and Human Services

A BILL

1       FOR AN ACT relating to public health; to adopt the Mercury  
2                Vaccine and Drug Act; to provide a penalty; and to declare  
3                an emergency.  
4       Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and  
2 may be cited as the Mercury Vaccine and Drug Act.

3           Sec. 2. For purposes of the Mercury Vaccine and Drug Act:

4           (1) Drug means: (a) Substances listed in the United States  
5 Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, and  
6 any supplement to such documents, as such documents existed on  
7 January 1, 2007; (b) substances intended for use in the diagnosis,  
8 cure, mitigation, treatment, or prevention of disease in humans; (c)  
9 substances, other than food, intended to affect the structure or  
10 function of the body of humans; and (d) substances intended for use  
11 as a component of any substance specified in subdivision (a), (b), or  
12 (c) of this subdivision, not including devices or device components,  
13 parts, or accessories that are not otherwise drugs;

14           (2) Person means an individual, partnership, limited  
15 liability company, corporation, or other association; and

16           (3) Trace amount of mercury means no more than 0.5  
17 micrograms of mercury per 0.25 milliliter or 0.25 gram of vaccine or  
18 drug. The mercury may be in the form of a mercury-containing  
19 component, including, but not limited to, thimerosal.

20           Sec. 3. Except as provided in sections 4 and 5 of this  
21 act:

22           (1) On and after July 1, 2007, no vaccine or other drug  
23 administered in the State of Nebraska shall contain more than a trace  
24 amount of mercury; and

25           (2) On and after July 1, 2009, no vaccine or other drug  
26 administered in the State of Nebraska shall contain any amount of  
27 mercury.

1           Sec. 4. (1) No vaccine or other drug containing any amount  
2 of mercury, including a trace amount of mercury, shall be administered  
3 unless the recipient, or his or her legal guardian, has signed a  
4 consent form as provided in subsection (2) of this section prior to  
5 receiving such vaccine or other drug. The person administering such  
6 vaccine or drug shall retain the signed consent form, or a copy  
7 thereof, in the recipient's permanent medical record.

8           (2) The Department of Health and Human Services shall  
9 create and make available for use a standardized consent form stating  
10 that the patient or patient's parent or guardian (a) has been made  
11 aware that the vaccine or other drug to be administered to the  
12 patient contains mercury, (b) has been advised that (i) all forms of  
13 mercury are dangerous toxins, (ii) exposure to even low levels of  
14 mercury may result in irreversible systemic damage to the brain,  
15 nervous system, and other organs and systems, and (iii) mercury  
16 ingestion may cause adverse behavioral and other changes, and (c)  
17 consents to the administration of such vaccine or other drug.

18           Sec. 5. The Director of Health and Human Services may  
19 exempt a vaccine or other drug that contains mercury from the  
20 requirements of section 3 of this act if he or she finds, and the  
21 Governor concurs in writing, that an actual or potential incident or  
22 public health emergency, including an epidemic or medical supply  
23 shortage, makes necessary the administration of such vaccine or other  
24 drug. Such exemption shall meet the following conditions:

25           (1) The exemption shall not be issued for an effective  
26 period of more than twelve months;

27           (2) Within forty-eight hours after the issuance of the

1 exemption, the director shall provide written notification of the  
2 exemption, which shall include an explanation of the findings giving  
3 rise to the exemption, to both the Legislature and any other party  
4 who requests the exemption in writing;

5 (3) Subsequent exemptions, not to exceed effective periods  
6 of twelve months each, may be issued for the same incident or public  
7 health emergency if the director determines, and the Governor concurs  
8 in writing, that such incident or emergency requires an extension or  
9 renewal of the prior exemption. Such extended or renewed exemption  
10 shall meet all of the conditions of this section; and

11 (4) The use of the vaccine or drug under the exemption is  
12 subject to the requirements of section 4 of this act.

13 Sec. 6. Any insurer authorized to transact the business of  
14 insurance in the State of Nebraska that provides insurance coverage  
15 for early childhood immunizations pursuant to a fee schedule or on a  
16 percentage reimbursement basis shall reimburse for vaccines which do  
17 not contain mercury or a mercury-containing additive or preservative  
18 on the same fee schedule or at the same percentage rate as for  
19 vaccines containing mercury.

20 Sec. 7. The Department of Health and Human Services shall  
21 establish procedures for the random testing of vaccines and other  
22 drugs in this state to determine the amount of mercury contained  
23 therein. The department shall semiannually report its findings, by  
24 manufacturer, product name, lot number, lot expiration date, and in  
25 micrograms of mercury per milliliter or gram of vaccine or other  
26 drug, to the citizens of this state by posting such findings on its  
27 web site.

1           Sec. 8. A person who knowingly administers a vaccine or  
2 other drug in violation of the Mercury Vaccine and Drug Act is guilty  
3 of a Class III misdemeanor. Such person may also be civilly liable  
4 under the act. Any person awarded damages in a civil action arising  
5 from a violation of the act shall be entitled to reimbursement for  
6 reasonable attorney's fees and court costs.

7           Sec. 9. Since an emergency exists, this act takes effect  
8 when passed and approved according to law.